IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 18TH AUGUST 2006 / 27TH SRAVANA 1928

TRC.No. 112 of 1999()

TA.363/1994 of S.T.A.T.ADDL.BENCH,TVM. DT.8.12.1998.
.....

REVISION PETITIONER: APPELLANT/ REVENUE

DEPUTY COMMISSIONER (LAW),
COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER SRI.V.V.ASOKAN

RESPONDENT:

MALABAR CASHEWNUTS & ALLIED
PRODUCTS KOLLAM.

BY

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 18/08/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

.....

T.R.C. No.112 of 1999

.....

Dated this the 18th day of August, 2006.

JUDGMENT

Ramachandran Nair, J.

The question raised in the T.R.C. is whether the Tribunal is justified in confirming the order of the first appellate authority granting concessional rate of tax at 4% on interstate sale of goods not covered by original portion of C Form but based on duplicate part of the C Form produced by the party. Even though notice was served on the respondent, respondent failed to appear in court and therefore, we heard the Special Government Pleader for the revision petitioner and proceed to dispose of the case on merits.

2. It is seen that the respondent-assessee failed to produce original of the C Form and therefore, concessional rate of tax at 4% was not allowed by the Assessing Officer on the interstate sales turnover not covered by original C Form. However in first appeal, the respondent-assessee produced duplicate portion of the lost C Form which was accepted by the appellate authority and granted concessional rate of tax. The Tribunal confirmed this decision following the judgment of the Madhya Pradesh High Court in MANGANESE ORE INDIA LTD. V. COMMISSIONER OF SALES TAX, MADHYA PRADESH (83 STC 116). On going through the judgment of the Madhya Pradesh High Court and the

order of the Tribunal which followed it, we find that both the Tribunal and the High Court found that there is no provision in Section 8 of the CST Act or Rule 12 (1) of the CST (R&T) Rules requiring production of original part of C Form for granting concessional rate of tax at 4%. This is factually incorrect because Form C prescribed under Rule 12(1) provides in the note of the original portion that it should be surrendered to the prescribed authority in terms of Rule framed by the State Government. Similar instruction is there in the other parts stating that duplicate should be retained by the selling dealer and the counterfoil is to be retained by the purchaser namely, the issuing dealer. We find that Rule 11(2) of the CST (Kerala) Rules, 1957 makes it mandatory that in order to grant concessional rate of tax on interstate sales under Section 8(1) of the CST Act the selling dealer has to produce original portion of the C Form issued by the purchasing dealer. In other words, we are of the view that in order to grant concessional rate, the requirement of production of original part of the C Form is mandatory. Even though all the entries in three parts namely, counterfoil, original and duplicate are one and the same, the same does not mean that the original can be dispensed with and in it's place duplicate can be accepted. In fact, Rule 11(2) of the CST (Kerala) Rules referred to above also authorises the officer to call for the duplicate from the selling dealer for comparison with the original and only if the officer is satisfied that the entries in original and duplicate are one and the same, the concessional rate need be granted. In other words, duplicate cannot

substitute the original portion of the C Form. A situation of loss of original C Form is visualised in Rule 12(3) of the CST (R&T) Rules which requires issuance of duplicate C Form after marking the same in red ink and after executing bond and with permission of the Assessing Officer. Therefore, we hold that if original of the C Form is lost, the concessional rate of tax cannot be granted based on duplicate part and the party can get the relief only by obtaining and producing duplicate C Form after observing the procedure contemplated under Rule 12(3) of the CST (R&T) Rules. We also feel that if the concessional rate is granted based on duplicate, there is every chance of misuse of duplicate for getting concessional rate for transaction different from the one for which concession is claimed and granted based on original of the same C Form. In the circumstances, we allow the T.R.C. by vacating the order of the Tribunal and by restoring the assessment at a higher rate on so much of the turnover not covered by original part of the C Form.

C.N.RAMACHANDRAN NAIR
Judge

K.M.JOSEPH
Judge

pms

C.N.RAMACHANDRAN NAIR &
K.M.JOSEH, JJ.

T.R.C. No.112 of 1999

JUDGMENT

Dated 18.8.2006